



Warshaw Burstein, LLP  
575 Lexington Avenue  
New York, NY 10022  
(212) 984-7700  
[www.wbny.com](http://www.wbny.com)

Maxwell Rubin  
(212) 984-7845  
[mrubin@wbny.com](mailto:mrubin@wbny.com)

October 9, 2020

**VIA ECF**

Judge Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Bonnie Shibetti and Katrina Puccini v. Z Restaurant,  
Diner and Lounge, Inc., et al.*  
Civil Action No.: 18-cv-00856 (BMC)

Dear Judge Cogan:

The Defendants respectfully submit this letter requesting the Court's guidance.

It has come to our attention that Plaintiffs' Counsel, specifically Mr. Blumetti, by telephone, is improperly directly soliciting current Parkview Diner employees to opt-in to the conditional FLSA class. We have been provided a voicemail message where Mr. Blumetti contacted a current employee via telephone asking the employee to call him back "if [the employee] has any interest in joining this lawsuit." We believe this contact was unsolicited.

We believe Mr. Blumetti's direct phone calls to current Parkview Diner employees, and his at least one voicemail, are violations of: (i) this Court's August 7, 2020 Order, (ECF No. 195), which does not provide for notice or solicitation by telephone; and (ii) New York Rule of Professional Conduct 7.3(a)(1) which prohibits a lawyer from engaging in solicitation by telephone contact unless the recipient is a close friend, relative, former client or existing client.

The Defendants have fully complied with the Court's August 7, 2020 Order. The Parkview Diner posted the required notice, and we have been made aware that the current employees have received two mailings from Plaintiffs' Counsel. Soliciting employees directly by phone is severely prejudicial to the Defendants. We do not know how many current employees have been directly contacted by Mr. Blumetti.

Judge Brian M. Cogan  
October 9, 2020  
Page 2 of 2

Therefore, we request guidance on how to proceed. If the Court would like to hear Mr. Blumetti's voice mail for itself, we can provide it. If the Court would prefer that we submit a formal request for a pre-motion conference concerning sanctions, we will comply.

We respectfully await further instruction from the Court.

Thank you.

Respectfully,



Maxwell J. Rubin

cc: All Counsel of Record (Via ECF)